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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/593,009	11/14/2008	Philip Owen	SP62H02/P-WO/US/US (22589)	6487
38790 7590 06/17/2009 THE SMALL PATENT LAW GROUP LLP 225 S. MERAMEC, STE. 725T ST. LOUIS, MO 63105			EXAMINER POLITO, NICHOLAS F	
			ART UNIT 3673	PAPER NUMBER
			NOTIFICATION DATE 06/17/2009	DELIVERY MODE ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

Docket@splglaw.com

Office Action Summary	Application No. 10/593,009	Applicant(s) OWEN, PHILIP	
	Examiner Nicholas Polito	Art Unit 3673	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 9/18/06 (prel. amt.).
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-16 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-16 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 18 September 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>2/25/2009</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claim 12 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

3. Regarding claim 12, the phrase "for example" renders the claim indefinite because it is unclear whether the limitation(s) following the phrase are part of the claimed invention. See MPEP § 2173.05(d).

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 1-9 and 12-16 are rejected under 35 U.S.C. 102(b) as being anticipated by Weston et al. (US Patent No. 6,256,822).

6. Regarding claim 1, Weston teaches in Figure 1A a mattress, comprising: a resilient body (10) having at least one upper surface portion (28) for supporting a person; and a plurality of shallow surface channels (39) disposed in the or each upper surface portion and extending parallel thereto (Fig. 1B); wherein at least one upper surface portion is upwardly inclined relative to the horizontal (col. 4, lines 43-52).

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7. Regarding claim 2, Weston teaches in column 4, lines 43 to 52 the mattress of claim 1, wherein the body has an axis of elongation corresponding to the head-to-toe direction of the person lying, in use, on the mattress, and at least one upper surface portion is inclined relative to the axis of elongation.

8. Regarding claim 3, Weston teaches in Figure 1B the mattress of claim 2, wherein at least some of the surface channels have a component of direction, along at least a portion thereof, parallel to the direction of rising incline of the respective surface portion.

9. Regarding claim 4, Weston teaches in Figure 1B the mattress of claim 2, wherein at least some of the surface channels have a component of direction, along at least a portion thereof, parallel to the axis of elongation.

10. Regarding claim 5, Weston teaches in Figure 1A the mattress of claim 2, wherein at least some of the surface channels extend substantially diagonally so as to make an angle of less than 90° with the axis of elongation.

11. Regarding claim 6, Weston teaches in Figure 1A the mattress of claim 2, wherein at least some of the surface channels have a non-linear path, when viewed from above.

12. Regarding claim 7, Weston teaches in Figures 1A and 1B the mattress of claim 2, wherein the body comprises sidewalls (12) adjacent said at least one surface portion, the mattress further including at least one connecting channel (39), the or each connecting channel being in communication with a plurality of said surface channels and with at least one sidewall.

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13. Regarding claim 8, Weston teaches in Figures 1A and 1B the mattress of claim 7, wherein the or each connecting channel is disposed in the or each upper surface portion.

14. Regarding claim 9, Weston teaches in Figures 1A and 1B the mattress of claim 7, wherein the or each connecting channel includes a connecting channel extending centrally parallel to said axis of elongation, and/or includes a connecting channel extending substantially transverse to said axis of elongation.

15. Regarding claim 12, Weston teaches in column 4, lines 35 to 42 the mattress of claim 1, wherein said surface channels have a transverse cross-sectional area that varies along the length of the channel

16. Regarding claim 13, Weston teaches in Figure 1A the mattress of claim 1, wherein said at least one- upper surface portion includes a body surface portion for supporting, in use, the body of a person, a head surface portion for supporting, in use, the head of a person, and/or a top surface portion.

17. Regarding claim 14, Weston teaches in Figures 1A and 1B the mattress of claim 2, wherein the connecting channel extending substantially transverse to said axis of elongation extends along the lowermost region of said head surface portion.

18. Regarding claim 15, Weston teaches in Figures 1A and 1B the mattress of claim 1, wherein, for one or more of the surface portions, said surface channels are provided over substantially the entire surface area thereof.

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19. Regarding claim 16, Weston teaches in Figures 1A and 1B the mattress of claim 1, wherein said surface channels are distributed over substantially the entire surface area of said surface portions.

Claim Rejections - 35 USC § 103

20. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

21. Claims 10 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Weston.

22. Regarding claim 10, Weston teaches the mattress of claim 1. Weston does not teach wherein said surface channels have a transverse dimension at the surface of about 4 to 15 mm. However, it would have been obvious to one having ordinary skill in the art at the time the invention was made to dimension the surface channels at about 4 to 15 mm in the transverse direction, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. *In re Aller*, 105 USPQ 233.

23. Regarding claim 11, Weston teaches the mattress of claim 1. Weston does not teach wherein said surface channels spaced apart at the surface by about 5 to 20 mm. However, it would have been obvious to one having ordinary skill in the art at the time the invention was made to space apart the channels by about 5 to 20 mm, since it has been held that where the general conditions of a claim are disclosed in the prior art,

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discovering the optimum or workable ranges involves only routine skill in the art. *In re Aller*, 105 USPQ 233.

Conclusion

24. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

a. Oprandi (US Patent No. 6,957,465) teaches a mattress with various shaped slits.

25. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Nicholas Polito whose telephone number is (571) 270-5923. The examiner can normally be reached on Monday-Friday 8:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Pete Cuomo can be reached on (571) 272-6856. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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/Nicholas Polito/
Examiner, Art Unit 3673

/Peter M. Cuomo/
Supervisory Patent Examiner, Art
Unit 3673

6/1/2009